

FCC MAIL SECTION

Federal Communications Commission

DA 99-534

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DISPATCHED BY
 Before the
 Federal Communications Commission
 Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 99-76
Table of Allotments,)	RM-9400
FM Broadcast Stations.)	
(Silverton and Bayfield, Colorado))	

NOTICE OF PROPOSED RULE MAKING

Adopted: March 10, 1999

Released: March 19, 1999

Comment Date: May 10, 1999

Reply Comment Date: May 25, 1999

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed on behalf of Voice Ministries of Farmington, Inc. ("petitioner"), permittee for a new FM broadcast station to operate on Channel 297C1 at Silverton, Colorado (File No. BPH-951020MA), requesting the reallocation of Channel 297C1 from Silverton to Bayfield and modification of its authorization to specify operation on Channel 296C. Petitioner failed to state its intention to apply for Channel 296C if it is reallocated to Bayfield, as requested, and should do so in response to this Notice. Failure to provide such commitment could result in the denial of the request. See the Appendix to this Notice.

2. Petitioner seeks to invoke the provisions of § 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). In support of its proposal petitioner advises that Bayfield (pop. 1,090),¹ located in La Plata County, has shown a steady growth rate over the past two decades. However, the community, which is not within nor near an urbanized area, is presently devoid of any local aural transmission service, whereas the smaller community of Silverton (pop. 716) currently has two FM allotments. Therefore, petitioner asserts that the reallocation of Channel 297C1 would serve the public interest consistent with the requirements of Section 307(b) of the Communications Act of 1934, as amended, as it would provide a first

¹Population figures set forth herein were taken from the 1990 U.S. Census.

local aural transmission service to Bayfield without removing the sole local service at Silverton.^{2, 3}

3. A staff engineering review has determined that the petitioner's proposal to reallocate Channel 297C1 from Silverton to Bayfield to specify operation on Channel 296C is mutually exclusive with its present allotment. The distance between the two communities is 65.1 kilometers (40 miles) whereas a minimum distance separation of 209 kilometers (130 miles) is required in this instance.

4. Further, we recognize that a construction permit (File No. BPH-951020MA) has been issued for Channel 297C1 at Silverton, but the facility has not been built. However, as the petitioner seeks to relocate its transmitter site, there will be potential gain and loss areas. Therefore, we request the petitioner to provide information reflecting the areas and population that will receive new service, as well as the areas and population that will lose potential service if Channel 297C1 is removed at Silverton. The study should also identify the reception services that are now available within the gain and loss areas.^{4, 5}

5. In light of the above, we will propose to reallocate Channel 297C1 from Silverton to Bayfield, Colorado, and modify the petitioner's authorization (File No. BPH-951020MA) to specify operation on Channel 296C, as requested. As the petitioner's modification request is consistent with the provisions of Section 1.420(i) of the Commission's Rules, we will not accept

²The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. (Co-equal weight is given to priorities (2) and (3).) Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).

³Channel 279C2, also allotted to Silverton, has two applications pending (see File Nos. BPH-971124MB and BPH-971126MD).

⁴We recognize that the Commission has not consistently expressed the same concerns regarding loss areas where the station has not been constructed. However, each proposal must be viewed in light of our policies and precedent to determine whether the reallocation request would result in a preferential arrangement of allotments. See Change of Community MO&O, *supra*. See also, Littlefield, Wolfforth and Tahoka, Texas, 12 FCC Rcd 3215 (1997).

⁵Reception services are those aural broadcast services that can be received within a given geographical area, including full-time AM, as well as FM commercial stations. In determining reception service provided by an FM station, the area of service circumscribed by the station's 1.0 mv/m signal contour, assuming maximum facilities for the class of station, except for Class C, should be considered. For the latter class, the minimum or existing Class C facilities, whichever is greater, should be used in the study. The area of reception service for full-time AM stations is defined according to whether it is a clear channel class AM station or another class of full-time AM station. For a clear channel Class A station, the reception area is defined by a station's 0.5 mv/m groundwave contour, based on its licensed facilities. For all other classes of full-time AM stations, reception service is defined as that service received within a station's nighttime interference-free contour. For purposes of determining the availability of aural services in the areas affected by a change of community proposal, the petitioner should include in its study the reception services provided by all relevant AM and FM stations. Reception areas that receive at least five radio services are considered to be well-served. Accordingly, within a given reception area, a count of radio services beyond five is unnecessary. See Willows and Dunnigan, California, 9 FCC Rcd 1802 (1994); see also Garberville and Hydesville, California, 9 FCC Rcd 3125 (1994).

competing expressions of interest in the use of Channel 296C at Bayfield.

6. Channel 296C can be allotted to Bayfield, Colorado, in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules at the petitioner's specified site located 0.35 kilometers (0.22 miles) southeast of the community at coordinates 37-13-32 NL and 107-35-53 WL.

7. Accordingly, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Bayfield, Colorado	--	296C
Silverton, Colorado	279C2, 297C1	279C2

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

9. Interested parties may file comments on or before May 10, 1999, and reply comments on or before May 25, 1999, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, S.W.; TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Jeffrey D. Southmayd, Esq.
Southmayd & Miller
1220 - 19th Street, N.W.
Suite 400
Washington, DC 20036

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been

decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply

comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C.